



# **SA PRODUCTIVITY COMMISSION INQUIRY INTO GOVERNMENT PROCUREMENT STAGE 2**

**RESPONSE TO THE ISSUES PAPER**

**JUNE 2019**

# SA Productivity Commssion Inquiry into Government Procurement Stage 2

Response to the discussion paper



## ABOUT US



Consult Australia is the industry association representing consulting firms operating in the built and natural environment sectors. These services include design, engineering, architecture, technology, survey, legal and management solutions for individual consumers through to major companies in the private and public sector including local, state and federal governments. We represent an industry comprising some 48,000 firms across Australia, ranging from sole practitioners through to some of Australia's top 500 firms with combined revenue exceeding \$40 billion a year.

### Some of our member firms include:



## INTRODUCTION

Consult Australia welcomes the opportunity to provide this submission to the SA Productivity Commission Inquiry into Government Procurement Stage 2.

Approximately 40 per cent of our industry's work is undertaken for public sector clients, and our members have played vital roles in the creation of some of Australia's iconic public infrastructure, including road, rail, hospital, airport, educational facilities, water and energy utilities, justice, aged care, sports stadia, and urban renewal projects. Procurement of government infrastructure is therefore an issue of particular importance to our members, as well as the wider industry we represent.

Our member firms rely heavily on optimal public sector procurement to deliver value for money and best project outcomes for the end user.

This submission is structured in the following way to ensure that both concerns and opportunities regarding procurement in South Australia are highlighted in the best possible way:

1. Time and costs associated with procurement;
2. Level of compliance with government procurement policies, guidelines, principles and standards;
3. Procurement governance and reporting arrangements;
4. Effectiveness and impact of the IPP;
5. Risk management framework;
6. Contemporary procurement policies and practices across other jurisdictions and sectors; and
7. Recommendations

Consult Australia strongly supports standardisation of procurement practices and documents, alongside simplified, fair liability and insurance requirements – with the inclusion of contractual limits to liability as a measure to provide certainty to industry contracting with government, and one that also will drive efficiency and result in better project outcomes for public sector clients.

Consult Australia's recent Model Client Policy calls on all political parties to ensure the governments they lead, or support, will behave ethically, fairly, and honestly in their dealings with the private sector. That is, for them to adopt a Model Client Policy, in line with governments' Model Litigant Policies.

A 'Model Client' works collaboratively with industry to achieve mutually beneficial outcomes and does not use their market power to the disadvantage of local businesses and their employees. Principals of a model client include:

- Collaborative-based approaches to procurement, project management and risk allocation;
- Promotion of safer and more productive delivery;
- best practice on bidding, contracting and procurement streamlined processes and;
- reduced costs.

We are aware and hopeful that any policy reforms that arise from this Inquiry have the potential to dramatically assist our industry's operations, while also achieving better infrastructure and value for money for the people of South Australia.

## 1 | Time and costs associated with procurement

Our industry frequently asserts that bidding for work is expensive, often to the point of being prohibitive particularly for small businesses. While the tender phase of a project is important for clients to evaluate the range of project solutions on offer and use competitive pressures to achieve the best value for money, the nature of bid processes in South Australia could be improved to avoid unnecessary costs and lost productivity.

Our members report that while there are many pre-qualified panels, if the panel process is not well organised the tender process can be expensive. For example, when applying to join a panel, applicants are required to submit a significant amount of information during the Expression of Interest (EOI) process. The information is then requested again when tenders are released to the panel, adding no value to the assessment process, but adding costs in terms of resources and time.

Panels are often unduly large, with some involving 50 or more prequalified consultants. Panels of this size do not deliver any efficiency gains over putting a tender out to the open market, particularly where agencies are asking for duplicate information to be provided. The open market tender process can also be challenging for consultants as they result in a large number of detailed tender responses being proffered, resulting in a drawn-out evaluation process, with reduced odds of being successful, and at significant expense to industry.

While our industry recognises that the cost of bidding for work is the price of doing business, we ask that clients respect and consider the cost imposed on businesses through their approaches. An example of this was a recent Renewal SA tender. The tender required a detailed response, to which 20 responses were received. In this scenario the option of shortlisting prior to requesting a detailed response would have had the potential to help save time and costs to both client and industry.

In other situations, bid documentation is required to address the bidder's compliance with a range of competencies, which ultimately will play little role in determining the final awarding of the contract. Meanwhile, some consultants report having been subject to tender processes that required them to "almost do the whole job" in the bid phase, but without the reward of a fee in return.

As well as the resource and time costs spent putting a bid together, other significant expenses can include the cost of the intellectual property included as a possible solution to the brief, or the resources required to test any background information.

### Recognising the true costs associated with tendering

As stated above, shortlisting has the potential to help save wasted time, costs and resources, but this purpose is defeated if too many bidders are shortlisted, as they continue to invest in the time, costs and resources associated with their bid that ultimately have to be recouped (e.g. recouped through other tenders for which they are successful).

Consultants also report being asked questions completely irrelevant to the work at hand, as the client is using a 'tick box' form approach to procurement and answering such questions all have an impact on time, cost and resources. Other factors, such as the requirement for bids to be fully compliant, undue complexity of the tender process, or lack of clarity surrounding project risk also impact on the cost of tendering.

Client recognition of the cost of tendering in and of itself is at the core of any solution to this issue. Clients rely on a viable consulting industry, and short-term costs to the industry as a result of sub-optimal tender practices have a longer-term impact. By understanding the various costs that go into preparing a bid for

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work, clients can reduce the impact by better focusing the questions they ask and reducing duplication through the bid process.

The selection process could also be structured to prevent keeping bids alive when they have no realistic prospect of success, while the issue of reimbursing unsuccessful bids in return for the use of (part or all of) a consultant's intellectual property is also worth considering.

### Pre-qualification schemes are useful

While government clients rightly ask industry to demonstrate that they meet certain competencies, a centralised database or even a pre-qualification scheme would be preferable to bidders filling out the same forms on multiple occasions.

In their report on public infrastructure, the Productivity Commission<sup>1</sup> recognised that the bulk of bid content was comprised of this type of paperwork, rather than proposals relating to the project at hand, which could usefully differentiate the bidding firms.

Any move to reduce the need for this compliance activity represents a significant opportunity for government to save on the cost of bidding, while also supporting industry.

### Quantifying the cost of bidding

We would also like to draw the SA Productivity Commission's attention to previous Consult Australia reports<sup>2</sup>, which have cited the 1996 study by the Office of Building Asset and Building Policy in Victoria, which compiled some examples of bidding costs, including:

- For a \$320,000 public facility, one tender submission by an architectural consultant cost \$9,000 to prepare. 102 tenders were submitted. If each tender cost the same amount, potentially \$918,000 would have been spent on the preparation of submissions by tenderers and the total cost of tendering equated to almost 3 times the project value;
- For another public facility, the client found that tender bid prices were too high so made minor changes to the tender documents and re-tendered the projects. The client was effectively bid-shopping, but this required the tenderers to put in extra work.
- For a \$5-6million project a consultant spent \$100,000 to prepare a bid. The successful bid was awarded a contract worth \$180,000, meaning that the consultant only received \$80,000 for the project and the rest covered their tender costs. The unsuccessful tenderers did not recoup any costs.

Consult Australia members have regularly reported that that these figures remain relevant today and are not by any means unusual.

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<sup>1</sup> Productivity Commission, Public Infrastructure, Inquiry Report No. 71, Canberra, 2014

<sup>2</sup> See [www.consultaustralia.com.au/Home/Advocacy](http://www.consultaustralia.com.au/Home/Advocacy)

### Consistent procurement models and contracts

Our members report that a number of government clients do not have consistent procurement models. If a limited number of procurement models were consistently used, the market would have greater certainty of the Government's approach. By developing an understanding of the approach and expectations the industry would be better able to respond.

Suggestions as to a process of consistent, best value bids are worth consideration. Consult Australia has long advocated for the use of a 'two envelope' system: separating price and non-price information, evaluating each bid according to the tender's ability to perform the work, before then moving to price considerations for those bids with the ability to perform the required tasks. This would drive a more diligent scoring system as it pushes value and experience more than price, giving a value-based selection rather than a price-based decision.

Another model for consideration is that used by SA Water – a Regulatory Business Plan is set for a number of years (e.g. a 4 year cycle), which utilises a more appropriately sized panel and uses consistent procurement models and contracts. This also results in a more collaborative approach with the panellists when working with them on projects.

We would also bring attention to the prolonged review of the DPTI suite of contracts and accompanying terms and special conditions. Many of our members have spent numerous hours involved in many meetings and respective feedback papers, submissions and responses with no progressive or favourable outcomes, yet another example of inconsistency and expense to businesses. The lack of certainty is particularly frustrating for consultants when this effort relates to a well-balanced and appropriate form of contract for the engagement of consultants that does not require amendment, i.e. the Australian Standard AS4122-2010.

## 2 | Level of compliance with government procurement policies, guidelines, principles and standards

Our members report that government procurement generally complies with policies, guidelines, principles and standards, however, again the lack of consistency is an issue.

An example of this is where the State Procurement Board played a significant role in developing a policy framework that underpinned a reform strategy, which increased the standardisation of procurement practices and documents across government and simplified the liability and insurance requirements. However, under the current South Australian State Procurement Regulations 2005 (under the State Procurement Act 2004) there is an exemption of building and construction projects above \$165K. This means those procurement reforms adopted by the State Procurement Board do not affect those agencies/authorities predominately focused on building and construction projects.

This situation sees businesses having to factor in disproportionate levels of project risk (with unlimited levels of liability), purchase additional insurance and waste time and cost on protected contract negotiations. This benefits neither the health of our sector nor the project objectives of clients and Government. Another example of lack of consistency in procurement policies is government departments' approach to requests for amendments during the tender stage. Some agencies deem a tender non-conforming based on something as administrative as the tenderer seeking clarification on the requirement to attend a set number of meetings. Some may judge a bid non-conforming because the tender has raised concerns regarding particular provisions in the contract terms and conditions. Limiting the ability of one party to negotiate with

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another on contract terms is contrary to fairness in contracting. In contrast other departments may have a more collaborative approach, recognising that the tender is merely seeking to flush out issues in order to avoid wasted costs or disputes further down the line.

Not only is lack of consistency an issue, but lack of transparency is also a concern.

An example of this is the lack of response or feedback by some government departments to unsuccessful tenderers. The quality of the feedback depends on the relationship between the failed tenderer and the procurement officers. Sometimes no feedback will be offered, and the losing bidders may not even be notified. Quality feedback is important in order for the industry to improve and helps to raise market competition.

### 3 | Procurement governance and reporting arrangements

With regard to Public Private Partnership arrangements, as consultants are not a party at the Partnership level, but are engaged further down the delivery chain, we do not see that it is appropriate for Consult Australia to comment on this.

### 4 | Effectiveness and impact of the IPP

#### Skilling South Australia Procurement Guidelines and the Industry Participation Policy

Consult Australia agrees with the aims and objectives of the Office of the Industry Advocate (OIA) with regards to the IPP.

Under the Skilling South Australia Procurement Guidelines, which applies to government contracts above \$50 million:

- a. 15% of the labour force hours need to be performed by nominated groups on construction contracts valued above \$50 million unless otherwise specified.
- b. Trainees and apprentices are to be a key focus for 15% of those labour force hours.
- c. The Government can include further nominated groups in the 15% by specifically including them in the Industry Participation Plan, including:
  - Cadets;
  - Upskilling;
  - Long-term unemployed with training needs;
  - People with barriers to employment;
  - Aboriginal jobseekers; and
  - Graduates.

However, at present contracts over \$50M do not include the further nominated groups of a) Cadets, or b) Graduates.

In addition to the above, for Government contracts under \$50M, agencies do not offer Tailored Industry Participation Plan options to provide an incentive for the Head Contractor and Subcontractors to engage tertiary qualified graduates.

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As outlined above, the current policy acknowledges and encourages VET / TAFE apprenticeships and training, however our member firms provide tertiary qualified graduate positions and continue to upskill professional / degree qualified staff with no similar support.

Our member firms currently provide significant private investment in the training of our professional staff, so that they can continue to provide better technical delivery solutions to South Australia. Many of our members, including the smaller locally owned companies, operate across State and International borders, participating in the global economy. Therefore in addition to this training they connect with other offices across Australia and internationally to bring the latest knowledge to SA projects.

Under current procedures, there is no acknowledgment or support by government policies or programs that allow member firms to extend the professional skills development of SA employees. If SA wants to retain, support and build a future ready workforce, it is essential that support is provided to businesses that create and grow a tertiary educated workforce for SA.

Some suggested actions include:

1. Applying a Tailored Industry Participation Policy for the engagement of consultants for government contracts under \$50M that acknowledges and rewards businesses that will grow a tertiary educated workforce in SA.
2. The specific inclusion of cadets and graduates as nominated groups to facilitate, or even encourage, access to interstate or global expertise in the undertaking of professional work to facilitate skills transfers and the development of local talent to global benchmarks.
3. Incentives to allow the internal permanent transfer of highly experienced and skilled professionals from other Australian states or international offices to live and work in SA.
4. Supporting innovation programs that bring and retain national and international knowledge to SA on significant infrastructure programs or projects.

## 5 | Examining the risk management framework

Consult Australia's [Model Client Policy](#) examines appropriate risk allocation in detail. The following outlines a number of principles applicable for an appropriate approach to risk allocation.

### Appropriate Risk Allocation

Some public and private sector clients are using their market power to adopt a position that presents systemic risks to the economy and business confidence. When acting as a purchaser, government entities hold significant market power, therefore it is important that their conduct demonstrates Model Client behavior. This is particularly important given the application of the Competition and Consumer Act to government procurement remains unresolved. A similar position is often adopted by the financial institutions and contractors, reinforcing a culture of inappropriate risk allocation where the burden is placed on professional services firms.

It is important here to highlight that technical capability and risk (e.g. is something designed correctly) is different from project risk. A firm's commercial capacity to cover that risk (e.g. having sufficient assets or capital) is driven by the extent to which the firm has control of the risk.

This culture can make a wide range of consultants liable for the entirety of the losses associated with the project, including in some instances, economic loss which a court may not normally ascribe to professional liability. This may have been a reluctantly tolerated business practice in the past when insurance costs were moderate and availability relatively unrestricted.



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Today, and particularly in tougher insurance environments, this inappropriate transfer of risk drives the cost and availability of professional indemnity insurance beyond the capacity of some consulting firms to afford, obtain, and retain cover over the often long-life of the liability exposure. As a result, some professional services firms now choose to avoid government and public sector work where a poor procurement culture persists (such as the contracting out of proportionate liability legislation).

### Fairness in Contracting

Onerous contracting is more likely to lead to disputation, as well as lengthier negotiations in the initial phase. Should a risk be realised and liability eventuate, an onerous contract means there will be less incentive for the parties to settle instead of pursuing costly litigation.

The cost of lengthy negotiations and managing onerous contracts, or indeed the cost of disputation and litigation is significant.

A 2009 study by the Cooperative Research Centre for Construction Innovation<sup>3</sup> found the cost of disputation to be worth around \$7 billion in that year in Australia, adding around 6 per cent to the overall cost of work done. In addition, delays to project delivery could be reduced by 7 per cent through better procurement, according to [The Economic Benefits of Better Procurement](#) report.

Onerous and unfair terms such as those identified in our Model Client Policy should be prohibited from use in government contracts. Governments should adopt a more appropriate approach to risk allocation and liability management. Setting an appropriate limit of liability allows business to properly insure themselves and makes government a more attractive client to do business with.

Current SA Government guidelines state that risk should be attributed to the party/ies best able to manage it, however in practice the majority of contract terms have the effect of transferring risk 'down the line' to those least able to manage it. This is because over time the emphasis on clearly defining the scope for the projects has diminished. So too has the practice of bringing the parties delivering the project together with the client (i.e. government) to assess the risks involved in the project. Research in our sector has consistently shown that poor scoping at the outset of the project leads to sub-optimal outcomes and increases the likelihood of disputation. Poor project scope means that the risks cannot be adequately identified and managed. Risk transfer does not equate to either risk assessment or risk management.

Fairness in contracting as set out in our Model Client Policy, would prohibit the use of contract clauses that indiscriminately pass risk through to the consultant regardless of their ability to identify, control and manage the risk. It would prohibit government agencies from using their market power to introduce such terms.

### Accessibility and Affordability of Professional Indemnity Insurance

Affordability and accessibility of professional indemnity insurance is critical because unlike other parties involved in infrastructure development, professional service firms are generally an asset poor class of business, with a majority being small and medium enterprises.

Like other professional groups, they provide intellectual services (as opposed to a tangible good), they depend on professional indemnity insurance to cover their common law liability. Indeed, consulting firms generally take out broad ranging and often expensive insurance policies to cover liabilities arising from their

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<sup>3</sup> Cooperative Research Centre for Construction Innovation, Guide to Leading Practice for Dispute Avoidance and Resolution, [www.construction-innovation.info](http://www.construction-innovation.info), 2009, p8

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work, and to protect their business and personal assets. For professional services firms, the professional indemnity insurance premium is one of their largest expenses.

In recent contracts, requirements for professional indemnity insurance and public liability insurance amounts are unreasonably high and bear little relationship to the risk profile of the project. This has the effect of increasing costs for consultants when bidding for projects in order to increase the amount of insurance they hold. This again reduces competition because few consultants are able to absorb the cost given that attempts to pass on the additional cost to the potential client renders their bid unattractive.

### Adoption of Standard Contracts

The use of standard contracts fairly negotiated between industry and government, with input from relevant stakeholders, reduces the need for costly legal review or negotiations. Such contracts give all parties the comfort of knowing that risk and reward is allocated fairly to avoid many of the negative outcomes described above.

This was the driver behind the development of the Australian Standard Conditions for Consultants AS4122-2010. The negotiation of AS4122-2010 was developed by government and industry representatives who invested significant resources.

The objective was to negotiate and agree a fair and balanced contract that would reduce the need for bespoke contracts and achieve significant cost savings by reducing the need for protracted contract negotiations.

AS4122-2010 has been adopted to some extent but has yet to achieve its full potential. Regrettably an issue frequently encountered with the use of standard contracts, like AS4122-2010 is the attachment of special conditions. Where agencies do attach special conditions, they need to be aware that they are undermining the benefits of using a standard contract. This is because it re-introduces the need for extended negotiation of the new terms.

While we acknowledge that standard contracts will not be appropriate on all projects (such as, for example, unique major infrastructure projects), we strongly recommend that government agencies use standard contracts on an 'if not, why not' basis, whereby the public service is required to use them unless there is an appropriate reason not to do so that is explained to their industry partners and recorded publicly.

In consultation with industry the SA government should also consider and explore known collaborative standard form contracts that will drive good practice and behaviours starting with the Principal client through the supply chain and into operation and maintenance. These could include for example, the New Engineering Contract (NEC4) or the FIDIC standard form contracts.

### Adoption of Proportionate Liability

In response to the insurance crisis of 2001, a package of reforms including Proportionate Liability Legislation was enacted to replace the doctrine of 'joint and several' liability. Under this old regime, multiple parties may have contributed to the loss suffered by a plaintiff, but any one of them could have been held liable for the total loss and be required to bear the full cost irrespective of their individual contribution to the loss. Proportionate liability was introduced on the principle that any loss is divided among the parties according to their share of responsibility, as determined by a court. Ensuring that all the parties retain their rights under the Proportionate Liability Legislation will keep the cost of insurance down and maintain stability of access to professional indemnity insurance for professionals.

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The persistence of contracting out of proportionate liability creates a significant systemic risk to the procurement of the professional services required to deliver government infrastructure. It also perpetuates a culture of poor risk management resulting in governments:

- Paying higher fees for professional services
- Forcing many businesses to pay expensive additional insurance premiums, if available
- Reducing competition from firms unable to obtain or afford insurance
- Creating a situation where some firms proceed without insurance, often unknowingly
- Reinforcing a culture of poor risk and contractor management, and of inappropriate offloading of risk
- Unnecessarily exposing the economy to future tightening in local and global insurance markets

This can be resolved by introducing the same contracting out prohibition that the Queensland legislation includes.

## 6 | Contemporary procurement policies and practices across other jurisdictions and sectors

### Procurement reviews

Procurement reviews have been conducted by the Commonwealth, New South Wales, and Western Australia, and in 2017 each government responded to these reviews<sup>45</sup>. Consult Australia and many other industry groups invested considerable time in putting together submissions to these reviews.

It is disappointing that the issues, which continue to be raised by industry groups including Consult Australia have yet to be addressed through these reviews.

For example, Recommendation 7 of the NSW Legislative Assembly Committee on Transport and Infrastructure Inquiry into the Procurement of Government Infrastructure Projects<sup>6</sup> is that the NSW Government assess whether contracting out of proportionate liability provisions should be prohibited across government contracts. The Committee reported that the NSW Government contracting out of proportionate liability may be preventing stakeholders from entry to procurement, due to the high degree of risk involved.

In its response the NSW Government noted the recommendation and the action arising is for the agencies to report to the Department of Finance, Services and Innovation on the use of the contracting out provisions, to enable an assessment of how frequently these provisions are used and in what circumstances. However, it is clear and common knowledge that the default position across the NSW Government is to contract-out.

The Queensland Government has undertaken an internal review of its procurement practices, focusing on probity and value for money. This was conducted by an interdepartmental committee. The outcome was the

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<sup>4</sup> See NSW Government response: <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2119#tab-governmentresponses>

<sup>5</sup> See Commonwealth Government response: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Former\\_Committees/Government\\_Procurement/CommProcurementFramework/Government\\_Response](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/Government_Procurement/CommProcurementFramework/Government_Response)

<sup>6</sup> Procurement of government infrastructure projects / Legislative Assembly, Committee on Transport and Infrastructure [Sydney, N.S.W.]: the Committee, 2017. 1 online resource ([51] pages) (Report no. 2/56 Committee on Transport and Infrastructure)

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launch of a revised Procurement Policy in 2017<sup>7</sup>. Consult Australia welcomes the Queensland Government's commitment under the policy to build procurement capability to ensure better outcomes like improved contract management, better engagement with stakeholders and suppliers, and embracing innovation. In addition, the statement of intent to promote a whole of government approach to procurement, which includes ways of reducing duplication within government and increasing consistency for suppliers is also welcome. However, it is unclear how this will be achieved given that agency departments remain responsible for operating their own procurement procedures.

Consult Australia has provided submissions into these reviews. Our submissions centre around a proposal that governments conduct themselves as a ['model client'](#), which complements their long-standing obligation to act as a 'model litigant'.

There are examples of contemporary of procurement policies and practices which effectively generate local input and employment, build industry capacity and promote innovation. Consult Australia would refer the Commission to:

[NSW Government Action Plan](#)

[SA Water Tenders and Contracts](#)

## 7 | Recommendations

As part of any reforms implemented to enable South Australian businesses to better participate in government procurement with respect to capital procurement and all procurement by prescribed public authorities, the South Australia Government should move away from practices that are currently based only on habit and set clear guidelines for the public sector on how to select the most appropriate procurement and delivery mechanisms for future infrastructure.

**Consult Australia recommends:**

### Time and costs associated with procurement

- 1) ***Remove requirement to repeat information already submitted during the panel selection process***
- 2) ***Introduce more appropriately sized panels; or if maintaining large panel numbers, consider shortlisting prior to requesting a detailed response***
- 3) ***Selection processes structured to prevent keeping bids alive when they have no realistic prospect of success, or; consider reimbursing unsuccessful bids in return for the use of (part or all) of a consultant's intellectual property.***
- 4) ***Use a limited number of procurement models consistently***
- 5) ***Under a regulatory business plan set for a number of years (e.g. a 4-year cycle), utilise appropriately sized panels which use consistent procurement models and a well-balanced and appropriate form of contract for the engagement of consultants that does not require amendment, i.e. the Australian Standard AS4122-2010***

### Level of compliance with government procurement policies, guidelines, principles and standards

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<sup>7</sup> <http://www.hpw.qld.gov.au/Procurement/ProcurementStrategy/Policy/Pages/default.aspx>

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- 1) **Ensure consistency across all government department procurement policies, guidelines, principles and standards**
- 2) **Ensure consistency across all government departments' approach to requests for amendments during the tender stage. Limiting the ability of one party to negotiate with another on contract terms is contrary to fairness in contracting**
- 3) **Ensure quality feedback to non-successful tenderers in a timely manner. This is important for industry to improve and helps to raise market competition**

### Effectiveness and impact of the IPP

- 1) **Apply a Tailored Industry Participation Policy for the engagement of consultants for government contracts under \$50M that acknowledges and rewards businesses that will grow a tertiary educated workforce in SA**
- 2) **Under the Skilling South Australia Procurement Guidelines, which applies to contracts above \$50M, specifically include graduates and cadets as nominated groups for inclusion in the 15% of the labour force hours**
- 3) **Introduce incentives to allow the internal permanent transfer of highly experienced and skilled professionals from other Australian states or international offices to live and work in SA**
- 4) **Support innovation programs to bring and retain national and international knowledge to SA on significant infrastructure programs or projects**

### Examining the risk management framework

- 1) **The Government adopt the [Model Client Policy](#)**
- 2) **The Government should set clear guidelines for; and adopt a more appropriate approach to risk allocation and liability management**
- 3) **The Government should prohibit contracts from referencing 'unlimited liability' and promote a better understanding by all stakeholders on the limitations of liability and the need for good risk management**
- 4) **That government procurement staff are made aware of the fact that technical capability and risk (e.g. is something designed correctly) is different from project risk**
- 5) **Onerous and unfair contract terms such as those identified in our [Model Client Policy](#) should be prohibited from use in government contracts**
- 6) **Contract clauses that indiscriminately pass risk through to the consultant regardless of their ability to identify, control and manage the risk be prohibited from use in government contracts**
- 7) **That requirements for professional indemnity insurance and public liability insurance are correctly assessed in line with the risk profile of the project**
- 8) **The Government use standard contracts such as AS4122-2010 unamended on an "if not, why not" basis**

### Contemporary procurement policies and practices across other jurisdictions and sectors

- 1) **The Government undertake and promote a whole of government approach to procurement, which includes reduction of duplication within government and increasing consistency for suppliers**
- 2) **The Government should consider examples such as [NSW Government Action Plan](#) and the [SA Water Tenders and Contracts](#) when reviewing current procurement practices**

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## CONTACT

We would welcome any opportunity to further discuss the issues raised in this submission. To do so, please contact:

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